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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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12 PAOLO MORENO, LAWRENCE  
13 VAVRA, and GABRIEL MORENO,

14 Plaintiffs,

15 v.

16 SFX ENTERTAINMENT, INC.,  
17 ROBERT F.X. SILLERMAN, and  
18 SHELDON FINKEL,

19 Defendants.  
20

No. CV-14-0880-RSWL-CWx

ORDER re: Defendants'  
Motion for Summary  
Judgment [61]

21 Currently before the Court is Defendants SFX  
22 Entertainment, Inc. ("SFX") and Robert F.X. Sillerman's  
23 ("Sillerman") (collectively, "Defendants")<sup>1</sup> Motion for  
24 Summary Judgment [61] ("Motion"), in which Defendants  
25 request summary judgment in their favor on all

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26 <sup>1</sup> All claims asserted against Defendant Sheldon Finkel were  
27 dismissed with leave to amend in the Court's August 1, 2014,  
28 Order [38] granting Defendants' Motion to Dismiss Plaintiffs'  
twelfth and thirteenth claims. Plaintiffs did not amend their  
Complaint.

1 remaining claims asserted against them by Plaintiffs  
2 Paolo Moreno ("Paolo"), Gabriel Moreno ("Gabriel"), and  
3 Lawrence Vavra ("Vavra") (collectively, "Plaintiffs").  
4 Not. of Defs.' Mot. Summ. J. 2:1-10, ECF No. 61.

5 The Court, having reviewed all papers submitted and  
6 pertaining to Defendants' Motion [61], **NOW FINDS AND**  
7 **RULES AS FOLLOWS:** The Court **DENIES** Defendants' Motion  
8 for Summary Judgment [61] in its entirety.

## 9 I. BACKGROUND

### 10 A. Factual Background

11 Plaintiffs Paolo Moreno, Gabriel Moreno, and  
12 Lawrence Vavra are individuals and residents of Los  
13 Angeles County, California. Compl. ¶¶ 9-11, ECF No. 1.  
14 Defendant SFX is a Delaware corporation with its  
15 principal place of business in New York. Id. ¶ 12;  
16 Answer ¶ 12 (undisputed). Defendant Sillerman is an  
17 individual residing in New York and is Chairman and CEO  
18 of SFX. Id. ¶ 13; Answer ¶ 13 (undisputed).

19 In short, Plaintiffs allege that the parties  
20 entered into a joint venture/partnership agreement  
21 ("the agreement") to create, based on Plaintiffs'  
22 business plan, a new EDM company that was to be  
23 financed by Defendant Sillerman and that was to, and  
24 now does, operate as SFX, which was, at the time of the  
25 alleged agreement, a corporate shell that had been  
26 incorporated by Sillerman. Plaintiffs allege that,  
27 after the agreement was made and after Plaintiffs  
28 performed their obligations, which benefitted

1 Defendants, Defendants did not uphold their side of the  
2 agreement in various ways, but, primarily, by refusing  
3 to compensate Plaintiffs according to the terms of the  
4 agreement.

5 Specifically, Plaintiffs allege that, in early  
6 January 2012, after spending nearly two years creating  
7 their business plan, Plaintiffs met with Defendant  
8 Sillerman to present their business plan for a venture  
9 that would "identify, acquire, consolidate, and operate  
10 assets in the [EDM] industry." Compl. ¶¶ 2, 9.

11 Plaintiffs allege that, in and after those meetings,  
12 Plaintiffs and Defendant Sillerman "agreed to 'partner'  
13 in the venture that is now known as SFX" such that  
14 Plaintiffs would "use their contacts, skills, and  
15 experience in EDM to consolidate the fragmented  
16 industry through a series of acquisitions" and  
17 Sillerman would "provide the financing for the  
18 venture." Id. (internal alterations and quotation  
19 marks omitted). Plaintiffs allege that Plaintiffs and  
20 Sillerman "came to a firm deal" on January 8, 2012,  
21 that promised Plaintiffs millions of founders' shares  
22 in the business, along with options and other cash  
23 compensation. Id. ¶ 3. Plaintiffs allege that  
24 "Sillerman unambiguously confirmed this in e-mails,  
25 stating[,]' 'We have a deal.'" Id.

26 Plaintiffs allege that they "performed their part  
27 in the venture," by using their "EDM connections,"  
28 "knowledge" of the EDM industry, and "acumen" to

1 acquire targeted assets that resulted in "much of the  
2 [\$1 billion] value of [SFX]." Id. ¶¶ 1, 4. Plaintiffs  
3 state that, until "they were forced out by Sillerman .  
4 . . . , Plaintiffs worked full-time on the venture's  
5 behalf to close its most important and lucrative  
6 acquisitions." Id. ¶ 4. Plaintiffs allege that "of  
7 the eight 'principal assets' identified by SFX's S-1  
8 SEC filing . . . , seven were acquired in deals  
9 identified and facilitated by Plaintiffs." Id.  
10 Plaintiffs further assert that, even aside from the  
11 acquisitions, Plaintiffs benefitted Defendants by  
12 creating the "conceptual development" of the business  
13 idea that SFX became. Id. ¶¶ 2, 4.

14 Plaintiffs allege that Defendants engaged "in a  
15 deliberate and deceptive scheme to deprive Plaintiffs  
16 of their rightful ownership stake in, and control of,  
17 the venture that they created and built" by, among  
18 other actions, deceiving Plaintiffs about their  
19 ownership interests in SFX, reassuring Plaintiffs while  
20 they worked that they would receive what was promised,  
21 and, ultimately, failing to compensate Plaintiffs  
22 according to the terms of the agreement. Id. ¶¶ 5, 40.  
23 Plaintiffs allege that Defendant Sillerman ultimately  
24 "[took] Plaintiffs' ownership shares for himself and  
25 continually evad[ed] Plaintiffs' requests to honor  
26 their agreement." Id. ¶ 43.

27 On the basis of the above and additional factual  
28 allegations, Plaintiffs allege the following eleven

remaining claims:

1. Breach of Joint Venture/Partnership Agreement
2. Breach of Implied Joint Venture/Partnership Agreement
3. Breach of Fiduciary Duty Owed to Joint Venturers/Partners
4. Constructive Fraud
5. Breach of Contract
6. Breach of Implied Contract
7. Promissory Estoppel
8. Fraudulent Inducement
9. Promissory Fraud
10. Unfair Competition - Violation of Cal. Bus. & Prof. Code §§ 17200 et seq.
11. Quantum Meruit

## **B. Procedural Background**

Plaintiffs filed this Action [1] on February 5, 2014. On April 7, 2015, Defendants filed the present Motion for Summary Judgment [61]. The Opposition [81] and Reply [90] were timely filed. The hearing on the Motion was set for May 26, 2015, and the Motion was taken under submission [93] on May 21, 2015.

## **II. LEGAL STANDARD**

A "court shall grant summary judgment" when the movant "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party moving for summary judgment has the initial

1 burden of proof to show no genuine dispute as to any  
2 material fact. Nissan Fire & Marine Ins. Co. v. Fritz  
3 Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000); see Fed.  
4 R. Civ. P. 56(a). The burden then shifts to the non-  
5 moving party to produce admissible evidence showing a  
6 triable issue of fact. Fritz, 210 F.3d at 1102-03; see  
7 Fed. R. Civ. P. 56(a). When a defendant moves for  
8 summary judgment, summary judgment "is appropriate when  
9 the plaintiff fails to make a showing sufficient to  
10 establish the existence of an element essential to  
11 [her] case, and on which [she] will bear the burden of  
12 proof at trial." Cleveland v. Policy Mgmt. Sys. Corp.,  
13 526 U.S. 795, 805-06 (1999).

### 14 III. DISCUSSION

#### 15 A. Evidentiary Objections

16 Defendants make several evidentiary objections [92]  
17 to Plaintiffs' Statement of Genuine Disputes [81-1].  
18 Upon review of the objected-to evidence and Defendants'  
19 bases for their objections, Defendants' evidentiary  
20 objections are **OVERRULED** either because the objections  
21 are without merit or because the Court need not rely on  
22 the objected-to evidence.

#### 23 B. Motion for Summary Judgment

24 Defendants request summary judgment in their favor  
25 as to all eleven claims asserted against them.

##### 26 1. Breach of Express or Implied Joint Venture/ 27 Partnership Agreement Claims

28 Plaintiffs' first and second claims assert breach

1 of joint venture/partnership agreement and breach of  
2 implied joint venture/partnership agreement.

3 "A joint venture exists when there is an agreement  
4 between the parties under which they have a community  
5 of interest, that is, a joint interest, in a common  
6 business undertaking, an understanding as to the  
7 sharing of profits and losses,<sup>2</sup> and a right of joint  
8 control." Farhang v. Indian Inst. of Tech., Kharagpur,  
9 No. C-08-02658 RMW, 2010 WL 2228936, at \*9 (N.D. Cal.  
10 Oct. 24, 2013) (internal quotation marks omitted)  
11 (quoting Connor v. Great W. Sav. & Loan Ass'n, 447 P.2d  
12 609 (Cal. 1968)). "A joint venture requires little  
13 formality in its creation, and the agreement is not  
14 invalid because it may be indefinite with respect to  
15 details." Gross v. Raeburn, 33 Cal. Rptr. 432, 437  
16 (Ct. App. 1963).

17 A joint venture agreement may also be implied by  
18 reasonable deduction based on the parties' "'acts and  
19 declarations.'" Farhang, 2010 WL 2228936, at \*10  
20 (quoting Holtz v. United Plumbing & Heating Co., 319  
21 P.2d 617 (Cal. 1957)). "[W]hen parties have  
22 'manifested their mutual intent to take [an] idea and  
23 make it concrete by forming a company and engaging in  
24 the business together . . . [this agreement combined  
25 with] the subsequent acts of the parties as they worked  
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27 <sup>2</sup> "[I]n the absence of an agreement to the contrary, losses  
28 are shared in the same proportion as profits." Farhang, 2010 WL  
2228936, at \*10.

1 out the details provide [] sufficient certainty to  
2 determine the existence of a breach and a remedy.'"<sup>3</sup>  
3 Id.

4        Though Defendants assert that Plaintiffs have "no  
5 evidence" showing the formation of an express or  
6 implied joint venture or partnership agreement,  
7 Plaintiffs in fact provide ample admissible evidence  
8 creating a genuine dispute of material fact as to  
9 Plaintiffs' first and second claims. See Fed. R. Civ.  
10 P. 56(a).

11        Plaintiffs allege that a joint venture/partnership  
12 agreement was formed on January 8, 2012, via email  
13 exchanges between Defendant Sillerman and Plaintiff  
14 Paolo and that the parties' statements and actions  
15 thereafter confirmed the existence of the express  
16 agreement and/or established the existence of an  
17 implied agreement. Key facts are statements made by  
18 the parties in emails from January 6, 2012, through  
19 January 8, 2012, as well as subsequent statements and  
20 actions of the parties. See Sillerman Decl., Exs. RS3-  
21 RS7, ECF No. 70; see also Hueston Decl., Ex. JH1, ECF  
22 No. 82; Paolo Moreno Decl. ("Paolo Decl."), ECF No. 83.

23        The first email that could relate to a potential  
24 joint venture or partnership is an email from Plaintiff  
25 \_\_\_\_\_

26        <sup>3</sup> "For a contract to be enforceable, its terms must be  
27 reasonably certain, meaning the parties' obligations under the  
28 contract must be sufficiently clear such that one can determine  
whether there has been a breach." Id. (citing Bustamonte v.  
Intuit, Inc., 141 Cal. App. 4th 199, 209, 45 Cal. Rptr. 3d 692  
(2006)).



1 Paolo to Defendant Sillerman on January 6, 2012, in  
2 which Paolo refers to a meeting between Paolo and  
3 Sillerman on January 5, 2012, and implies that Paolo  
4 and Sillerman discussed the creation of a new company  
5 at that meeting. Sillerman Decl., Ex. RS4 at 026  
6 (email from Paolo to Sillerman, Jan. 6, 2012, 4:18  
7 p.m.). Paolo provides Sillerman with what Paolo calls  
8 "confidential information" about activity surrounding  
9 important EDM acquisition targets, including the  
10 activity of Paolo's team with regard to those targets,  
11 and states that the confidential information is being  
12 shared with Sillerman "for our new company." Id. at  
13 026-027. Paolo states, "I would like to sort out our  
14 deal as soon as possible[] [s]o we can go and conquer  
15 the space immediately . . . ." Id. at 027. Paolo  
16 explains that "Electric Daisy Carnival is a deal I  
17 would like for us to cut next week." Id. (emphasis  
18 added). Paolo signs his name and, underneath his name,  
19 writes "Future (CEO / SFX Entertainment)." Id.

20 Sillerman's response does not refute any of Paolo's  
21 statements about the creation of a new company with  
22 Sillerman. Id. at 026 (email from Sillerman to Paolo  
23 on January 6, 2012, at 5:08 p.m.). Sillerman's  
24 response states, "We must be fated to be together," and  
25 proposes specific terms<sup>4</sup> for what Sillerman calls "our

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27 <sup>4</sup> Defendant Sillerman proposes that Paolo "receive 1MM  
28 shares of SFX stock," "200K options a year for 5 years as part of  
your 5 year employment agreement," "[s]alary of \$300K, plus a  
bonus," and "[u]sual perks appropriate to your position."

1 deal." Id. Sillerman concludes: "Let's get it done  
2 and have at it. We're ready to go." Id.

3 In response, Paolo asks about and negotiates the  
4 proposed terms and requests "a deal" for Plaintiffs  
5 Gabriel and Vavra. Id. at 025 (email from Paolo to  
6 Sillerman, Jan. 6, 2012, at 6:27 p.m.).

7 Additional negotiations occur,<sup>5</sup> and at 9:08 p.m. on  
8 January 6, 2012, Paolo sends Sillerman an email that  
9 proposes terms for Plaintiffs Gabriel and Vavra. Id.  
10 Paolo says his "team will all be walking away from  
11 there [sic] current situations and coming on board 24/7  
12 to build this empire and all believe in the stock value  
13 at the end of the day." Id. Paolo notes, "we can  
14 figure out offices overhead staff etc later on."<sup>6</sup> Id.  
15 at 025.

16 In response, on January 7, 2012, Sillerman writes  
17 two sentences to Paolo: "We're fine on these deals.  
18 Let's go." Id. at 024 (email from Sillerman to Paolo,  
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20 Sillerman Decl., Ex. RS4, at 026 (email from Sillerman to Paolo  
21 on January 6, 2012, at 5:08 p.m.).

22 <sup>5</sup> See id. at 025 (email from Sillerman to Paolo on Jan. 6,  
23 2012 at 9:48 p.m.) (Sillerman states that he needs Paolo's input  
24 "on deals for your associates," and states that he is "standing  
25 by" for those details); id. (Sillerman rejects Paolo's \$500,000  
26 salary request and states, "Cash compensation is not how you'll  
grow rich. \$300K, plus bonus, is a good starting point. You do  
close to what you say you can and you'll never mention comp to me  
again. You'll make more than you can imagine.").

27 <sup>6</sup> Such evidence, among other statements by the parties,  
28 genuinely disputes Defendants' argument that Plaintiffs were  
intended only to be mere employees of SFX, and not joint  
venturers or partners. See Mot. 4:21-25.

1 Jan. 7, 2012, at 12:12 a.m.).

2 Plaintiff Paolo responds that he "presented the  
3 deals below to the team" and that, though the salaries  
4 are "pay cuts" for his team, the team is "okay on the  
5 salaries" because they "believe in you, they believe in  
6 me." Id. at 023 (email from Paolo to Sillerman on Jan.  
7 7, 2012, at 10:52 a.m.). Paolo requests additional  
8 founders shares Plaintiffs Gabriel and Vavra and asks  
9 questions regarding bonuses and ownership interests.  
10 Id. Paolo states that he "want[s] to close this today"  
11 because his team is "ready to get busy" and Paolo  
12 "want[s] to walk in the rooms next week, and start  
13 making offers on our companies['] behalf." Id.

14 Defendant Sillerman responds to Paolo's questions  
15 and requests and concludes that they should "not wait  
16 until the end of the week to begin papering this," as  
17 they should "keep the momentum going." Id. at 022-23  
18 (email from Sillerman to Paolo on Jan. 7, 2012, at  
19 11:12 a.m.). In response, Paolo writes, "MY TEAM AND I  
20 ARE FULLY IN%100." Id. at 022 (email from Paolo to  
21 Sillerman on Jan. 7, 2012, at 4:49 p.m.). Paolo  
22 states: "Let's put the lawyers in contact now to paper  
23 this up. We are officially partners, I have two  
24 changes." Id. Plaintiff proposes his "last  
25 negotiation" regarding founders shares so that they can  
26 "close this deal." Id. Paolo urges Sillerman to "move  
27 forward [to] close this deal" to become "partners" and  
28 states that "[b]y partner I mean across the board our

1 interest will NEVER be mis-aligned." Id.

2 In response, on January 7, 2012, at 8:49 p.m.,  
3 Sillerman writes to Paolo: "Deal. The additional  
4 shares will come from me. Send me a quick summary to  
5 make sure we're on the same page. ... Once I receive  
6 and confirm the recap the lawyers will be on it." Id.  
7 (email from Sillerman to Paolo, Jan. 7, 2012, at 8:40  
8 p.m.). Paolo responds, "Will do." Id. at 021 (email  
9 from Paolo to Sillerman, Jan. 7, 2012, at 6:27 p.m.).

10 On January 8, 2012, at 10:47 a.m., Paolo emails  
11 Sillerman the following terms:

- 12 1. "5 year employment agreements" for all.
- 13 2. For Paolo Moreno:
  - 14 a. "300K base+ bonuses"
  - 15 b. "1.5mm founder shares"
  - 16 c. "200k options a year"
  - 17 d. "additional options and bonuses, payable in
  - 18 stock or cash, as warranted"
- 19 3. For Lawrence Vavra:
  - 20 a. "200K base+ bonuses"
  - 21 b. "500k founder shares"
  - 22 c. "200k options a year"
  - 23 d. "additional options and bonuses, payable in
  - 24 stock or cash, as warranted"
- 25 4. For Gabriel Moreno:
  - 26 a. "100K base+ bonuses"
  - 27 b. "500k founder shares"
  - 28 c. "100k options a year"

1 d. "additional options and bonuses, payable in  
2 stock or cash, as warranted"

3 5. For "Associate C," which is "Donnie" (James "Disco  
4 Donnie" Estopinal),<sup>7</sup> Paolo states, "we have to  
5 discuss."

6 Id. at 021 (email from Paolo to Sillerman, Jan. 8,  
7 2012, at 10:47 a.m.).

8 On January 8, 2012, at 11:06 a.m., Defendant  
9 Sillerman responds: "We have a deal." Id. at 020  
10 (email from Sillerman to Paolo, Jan. 8, 2012, at 11:06  
11 a.m.). The only other statement Sillerman makes in the  
12 email is: "Ask anyone who has been part of any of our  
13 companies, like Mitch, and they will tell you that they  
14 made more money from the optional payments than from  
15 the mandatory payments. Let's get the lawyers  
16 working." Id.

17 The above email discourse is sufficient to create a  
18 genuine dispute of material fact<sup>8</sup> as to whether an  
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22 <sup>7</sup> See Opp'n 3:22.

23 <sup>8</sup> Though Defendants argue that the parties reserved final  
24 agreement until formal documents were signed, see Mot. 5:15-18,  
25 the Court does not find any indisputable statements that  
26 expressly reserve final agreement until formal documents are  
27 signed. See Smissaert v. Chiodo, 330 P.2d 98, 100 (Cal Ct. App.  
28 1958) (noting that there must be a "manifest intention that the  
formal agreement is not to be complete until reduced to a formal  
writing"); Ablett v. Clauson, 272 P.2d 753, 756 (Cal. 1954) (in  
bank) (requiring "an essential element" to be "reserved for the  
future agreement of both parties" for a "contract[] to agree").

express joint venture/partnership agreement was formed.<sup>9</sup>  
 Plaintiffs' evidence also establishes a genuine dispute  
 of material fact as to whether an implied joint  
 venture/partnership agreement was formed.<sup>10</sup>

In light of the above, Defendants' Motion for  
 Summary Judgment with regard to Plaintiffs' first and  
 second claims for breach of an express or implied joint  
 venture/partnership agreement is **DENIED**.

2. Breach of Fiduciary Duty Owed to Joint  
 Venturers or Partners & Constructive Fraud  
 Claims

Plaintiffs' third and fourth claims assert breach  
 of fiduciary duty owed to joint venturers or partners

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<sup>9</sup> See Interserve, Inc. v. Fusion Garage PTE. Ltd., No. C 09-5812 RS (PVT), 2010 WL 3339520, at \*6 (N.D. Cal. Aug. 24, 2010) ("While it may be true that the parties never reached a meeting of the minds on how the business would operate on an ongoing basis, their cooperative efforts in developing the product were sufficient to give rise to an obligation on both parties' part not to usurp the fruits of those efforts." (citing Holmes, 88 Cal. Rptr. 2d at 134 for the Holmes court's rejection of the contention that a partnership agreement was too indefinite when the evidence showed that the parties had agreed, "It's going to be our baby, and we're going to work on it together," and had in fact done so)).

<sup>10</sup> The parties' statements and conduct could support a reasonable jury's finding that the parties "'manifested their mutual intent to take [an] idea and make it concrete by forming a company and engaging in the business together'" and took "'subsequent acts . . . [to] work[] out the details.'" Gross, 33 Cal. Rptr. at 437; see Johnson v. Am. Cas. Co. of Reading, Pa., 408 F. App'x 76, 79 (9th Cir. 2011) (stating that because "a reasonable jury could find" plaintiff's material facts to be true, summary judgment was "improper"); Sillerman Decl., Exs. RS2-RS9; Paolo Moreno Decl., Exs. PM2-PM5; Hueston Decl., Ex. JK1 (Sillerman Dep.).

1 and constructive fraud.

2 a. *Breach of Fiduciary Duty*

3 Under California law, "[t]he elements of a claim  
4 for breach of fiduciary duty are (1) the existence of a  
5 fiduciary relationship, (2) its breach, and (3) damage  
6 proximately caused by that breach." Love v. The Mail  
7 on Sunday, 489 F. Supp. 2d 1100, 1104 (C.D. Cal. 2007)  
8 (citing City of Atascadero v. Merrill Lynch, Pierce,  
9 Fenner & Smith, Inc., 68 Cal. App. 4th 445, 483  
10 (1998)); see also Knox v. Dean, 205 Cal. App. 4th 417,  
11 433 (2012). "In both joint ventures and partnerships,  
12 the parties owe fiduciary duties to each other."  
13 Interserve, Inc. v. Fusion Garage PTE. Ltd., No. C 09-  
14 5812 RS (PVT), 2010 WL 3339520, at \*4 (N.D. Cal. Aug.  
15 24, 2010) (citing Leff v. Gunter, 189 Cal. Rptr. 377,  
16 381 (Ct. App. 1983)).

17 Defendants argue that Plaintiffs' claims for breach  
18 of fiduciary duty and constructive fraud should be  
19 dismissed because no fiduciary duty exists when no  
20 joint venture/partnership agreement exists. But, as  
21 discussed above, Plaintiffs' first and second claims  
22 asserting a joint venture/partnership agreement  
23 survive, and, thus, Plaintiffs' evidence establishes a  
24 genuine dispute of material fact as to whether a  
25 fiduciary relationship exists among the parties.  
26 Plaintiffs' evidence establishes a genuine dispute of  
27 material fact regarding also the second and third  
28

1 prongs of their claim for breach of fiduciary duty.<sup>11</sup>

2 b. *Constructive Fraud*

3 Constructive fraud "depends on the existence of a  
4 fiduciary relationship of some kind." Beco Dairy  
5 Automation, Inc. v. Global Tech Sys., Inc., No. CV-F-  
6 12-1310 LJO SMS, 2012 WL 4052066, at \*8 (E.D. Cal.  
7 Sept. 14, 2012). Constructive fraud under California  
8 law is "'any breach of duty which, without actual  
9 fraudulent intent . . .[, ] gains an advantage to the  
10 person at fault . . . by misleading another to his or  
11 her prejudice.'" Id. (citing Cal. Corp. Code § 1573).<sup>12</sup>

12 Upon review of the evidence, and as exhibited in  
13 part by the above facts, Plaintiffs provide ample  
14 evidence establishing a genuine dispute of material  
15 fact as to the elements of constructive fraud. As  
16 such, the Court **DENIES** Defendant's Motion for Summary

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18 <sup>11</sup> See, e.g., Compl. ¶¶ 55-56; Pls.' Facts ¶¶ 158, 161;  
19 Sillerman Dep. at 92:4-93:23 (Hueston Decl., Ex. JH1 at 019); id.  
20 at 203:11-238:17 (Hueston Decl., Ex. JH1 at 033-035); Defs.'  
21 Resps. to Pl. Vavra's First Interoggs. No. 55 (stating  
22 compensation of SFX officers from January 1, 2012, to the  
23 present); see Pellegrini v. Weiss, 81 Cal. Rptr. 3d 387, 397 (Ct.  
24 App. 2008) ("[P]artners or joint venturers have a fiduciary duty  
25 to act with the highest good faith towards each other regarding  
26 affairs of the partnership or joint venture."); see also Boyd v.  
Bevilacqua, 55 Cal. Rptr. 610, 247 Cal. App. 2d 272, 288 (Ct.  
App. 1966) (noting that where a joint venture / partnership  
agreement "is entirely repudiated by one of the parties and the  
fruits of the venture are sought to be appropriated," breach of  
fiduciary duty can be established "without determining all the  
terms of the agreement with exactness").

27 <sup>12</sup> See also Boyd, 247 Cal. App. 2d at 290 ("Constructive  
28 fraud frequently consists in the breach of a duty arising out of  
a confidential or fiduciary relationship.").



Judgment as to Plaintiff's third and fourth claims for breach of fiduciary duty and constructive fraud.

3. Breach of Express and Implied Contract, Promissory Estoppel, and Quantum Meruit Claims

Plaintiffs' fifth, sixth, seventh, and eleventh claims assert breach of contract, breach of implied contract, promissory estoppel, and quantum meruit.

Breach of Express Contract

"A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" Agam v. Gavra, 186 Cal. Rptr. 3d 295, 305 (Ct. App. 2015).

Upon review of the evidence, and as exhibited in part by the above facts, Plaintiffs' evidence genuinely disputes the existence of a contract, Plaintiffs' performance, Defendants' breach, and Plaintiffs' resulting injury. See, e.g., Paolo Moreno Decl. ¶¶ 29-34 (citing Exs. PM14-25); Sillerman Decl., Exs. RS3-RS5; Sillerman Dep. (Hueston Decl., Ex. JH1).

Breach of Implied Contract

"A cause of action for breach of implied contract has the same elements as does a cause of action for breach of contract, except that the promise is not expressed in words but is implied from the promisor's conduct." Yari v. Producers Guild of Am., Inc., 161 Cal. App. 4th 172, 182 (Ct. App. 2008). "California

1 law allows for recovery for the breach of an implied-  
 2 in-fact contract when the recipient of a valuable idea  
 3 accepts the information knowing that compensation is  
 4 expected, and subsequently uses the idea without paying  
 5 for it.'" Green v. Schwarzenegger, No. CV 93-5893-WMB,  
 6 1995 WL 874191 (C.D. Cal. 1995).

7 Plaintiffs provide evidence that they shared their  
 8 valuable business plan with Defendants and performed  
 9 valuable services for Defendants at Defendants' request  
 10 and with the expectation of being compensated, and that  
 11 Plaintiffs were never compensated for their  
 12 performance. See, e.g., Paolo Moreno Decl. ¶¶ 22-41;  
 13 Sillerman Dep. 92:4-93:23; id. at 238:20-13.

14 Plaintiffs' evidence creates a genuine dispute of  
 15 material fact as to whether an implied contract was  
 16 formed.

#### 17 Promissory Estoppel

18 The elements of promissory estoppel are "(1) a  
 19 promise clear and unambiguous in its terms; (2)  
 20 reliance by the party to whom the promise is made; (3)  
 21 reliance [that is] both reasonable and foreseeable; and  
 22 (4) . . . injury [based on that] reliance.'" US  
 23 Ecology, 28 Cal. Rptr. 3d at 905.

24 Plaintiffs provide evidence that Defendants made  
 25 clear and unambiguous promises to Plaintiffs; that  
 26 Plaintiffs reasonably and foreseeably relied on  
 27 Defendants' promises; and that Plaintiffs were injured  
 28

1 by their reliance on the promises because Plaintiffs  
 2 were never compensated, as expected, for the valuable  
 3 services Plaintiffs performed for Defendants. See,  
 4 e.g., Paolo Moreno Decl. ¶¶ 22-41; Sillerman Dep.  
 5 (Hueston Decl., Ex. JH1); Sillerman Decl., Ex. RS2-RS5.  
 6 As such, Plaintiffs' evidence establishes a genuine  
 7 dispute of material fact as to whether the elements of  
 8 promissory estoppel are satisfied.

#### 9 Quantum Meruit

10 "The elements of quantum meruit are: (1) that the  
 11 plaintiff performed certain services for the defendant,  
 12 (2) the[] reasonable value [of the services can be  
 13 determined], (3) [the services] were rendered at  
 14 defendant's request, and (4) [the services] are  
 15 unpaid." Cedars Sinai Med. Ctr. v. Mid-W. Nat'l Life  
 16 Ins. Co., 118 F. Supp. 2d 1002 (C.D. Cal. 2000) (citing  
 17 Haggerty v. Warner, 115 Cal. App. 2d 468, 475 (Ct. App.  
 18 1953)).

19 As discussed above, Plaintiffs' evidence  
 20 establishes a genuine dispute of material fact as to  
 21 whether the elements of quantum meruit are satisfied.

22 In light of the above, the Court **DENIES** Defendants'  
 23 Motion for Summary Judgment as to Plaintiff's fifth,  
 24 sixth, seventh, and eleventh claims asserting breach of  
 25 contract, breach of implied contract, promissory  
 26 estoppel, and quantum meruit.

#### 27 4. Fraudulent Inducement and Promissory Fraud

1                   Claims

2           Plaintiffs' eighth and ninth claims are fraudulent  
3 inducement and promissory fraud.

4           Fraud requires "(a) a misrepresentation (false  
5 representation, concealment, or nondisclosure); (b)  
6 scienter or knowledge of its falsity; (c) intent to  
7 induce reliance; (d) justifiable reliance; and (e)  
8 resulting damage." Hinesley v. Oakshade Town Ctr., 37  
9 Cal. Rptr. 3d 364, 367 (Ct. App. 2005).

10          Fraud in the inducement "is a subset of the tort of  
11 fraud" and "occurs when the promisor knows what he is  
12 signing [or agreeing to][,] but [the promisor's]  
13 consent is induced by fraud" such that "mutual assent  
14 is present and a contract is formed," but, due to the  
15 fraud, the contract is "voidable." Id. Promissory  
16 fraud is "a subspecies of the action for fraud" and is  
17 supported by evidence that the "misrepresentation" was  
18 a promise made without the intent to perform that  
19 promise. Lazar v. Sup. Crt., 909 P.2d 981, 984-85  
20 (Cal. 1996); see id. ("An action for promissory fraud  
21 may lie where a defendant fraudulently induces the  
22 plaintiff to enter into a contract.").

23          Plaintiffs' evidence establishes a genuine issue of  
24 material fact for each element of fraud. Plaintiffs  
25 provide evidence that Defendants made  
26 misrepresentations. See, e.g., Sillerman Decl. 167:4-  
27 169:18; id. 129:13-138:10. Plaintiffs also provide  
28

1 circumstantial evidence that could support a reasonable  
 2 jury's finding that Defendants made promises to  
 3 Plaintiffs to induce them to work for SFX that  
 4 Defendants did not intend to keep. See, e.g., id. at  
 5 129:13-138:10; Paolo Moreno Decl. ¶¶ 22-41; Sillerman  
 6 Decl. 92:4-93:8; id., Ex. RS4. Plaintiffs provide  
 7 evidence that would support a reasonable jury's finding  
 8 that Plaintiff's reliance on Defendants'  
 9 misrepresentations was justifiable. See, e.g., Paolo  
 10 Decl.; Sillerman Decl., Exs. RS2-RS5. Finally,  
 11 Plaintiffs provide evidence supporting injury resulting  
 12 from their reliance. See, e.g., Defs.' Resps. to Pl.  
 13 Vavra's First Interoggs. No. 55; Paolo Decl.; Sillerman  
 14 Dep. (Hueston Decl., JH1).

15 As such, the Court **DENIES** Defendants' Motion for  
 16 Summary Judgment as to Plaintiffs' eighth and ninth  
 17 claims for fraudulent inducement and promissory fraud.

18 5. Unfair Competition Claim, Cal. Bus. & Prof.  
 19 Code § 17200

20 Finally, Plaintiff's tenth claim is for violation  
 21 of California's Unfair Competition Law, Cal. Bus. &  
 22 Prof. Code §§ 17200 et seq.

23 "California's Unfair Competition Law ("UCL")  
 24 prohibits any 'unlawful, unfair or fraudulent business  
 25 act or practice.'" Williams v. Gerber Prods. Co., 552  
 26 F.3d 934, 938 (9th Cir. 2008); Cal. Bus. & Prof. Code §  
 27 17200. Plaintiffs' Complaint asserts that Defendants  
 28

1 actions constitute "unfair and unlawful business  
2 practices." Compl. ¶ 116.

### 3 Unlawful

4 "Unlawful business practices [under the UCL] are  
5 'anything that can properly be called a business  
6 practice and that at the same time is forbidden by law  
7 . . . be it civil, criminal, federal, state, or  
8 municipal, statutory, regulatory, or court-made,' where  
9 court-made law is, 'for example a violation of a prior  
10 court order.'" Tervon, LLC v. Jani-King of Cal., Inc.,  
11 No. 14-cv-2648 BAS (JMA), 2015 WL 4135162, at \*7 (S.D.  
12 Cal. July 8, 2015) (quoting Nat'l Rural Telecomm. Co-op  
13 v. DIRECTV, Inc., 319 F. Supp. 2d 1059, 1074 (C.D. Cal.  
14 2003)). While an unlawful business act or practice  
15 cannot be based on "common law violations such as  
16 breach of contract," "[c]ourts have found that facts  
17 supporting a violation of [Cal.] Civil Code § 1709<sup>13</sup>  
18 sufficiently state a cause of action under Cal. Bus. &  
19 Prof. Code § 17200." Id. (citing Whitehurst v. Bank2  
20 Native Am. Home Lending, LLC, No. 14-cv-00318-TLN-AC,  
21 2014 WL 4635387, at \*8 (E.D. Cal. Sept. 10, 2014)).  
22 The Supreme Court of California has clearly stated that  
23 the UCL's scope, which "is broad," encompasses "actual

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24  
25 <sup>13</sup> California Civil Code section 1709, which "codif[ies] in  
26 part the common law tort of fraud," states that a person who  
27 "wilfully deceives another with intent to induce him to alter his  
28 position to his injury or risk" is "liable for any damage which  
[the victim] thereby suffers." Cal. Civ. Code § 1709; Clemens  
v. DaimlerChrysler Corp., 534 F.3d 1017, 1022 (9th Cir. 2008).

1 fraud as defined in and prohibited by Civil Code  
2 section 1572 and deceit as defined in and prohibited by  
3 Civil Code sections 1709 and 1710." Kasky v. Nike,  
4 Inc., 45 P.3d 243, 249 (Cal. 2002).

5 Because, as discussed above, Plaintiffs' evidence  
6 creates a genuine dispute of material fact regarding  
7 fraud, including fraud as defined under Cal. Civ. Code  
8 §§ 1572, 1709, and 1710, Plaintiffs' evidence creates a  
9 genuine dispute of material fact regarding Plaintiffs'  
10 UCL claim under the "unlawful" prong.

11 As such, the Court **DENIES** Defendants' Motion for  
12 Summary Judgment as to Plaintiffs' claim for violation  
13 of Cal. Bus. & Prof. Code §§ 17200 et seq.

#### 14 **IV. CONCLUSION**

15 Based on the foregoing, the Court **DENIES**  
16 Defendants' Motion for Summary Judgment [61] in its  
17 entirety.

18 **IT IS SO ORDERED.**

19 DATED: July 29, 2015

RONALD S.W. LEW

**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge